

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Norfolk Division**

UNITED STATES OF AMERICA

v.

NO. 2:04cr148

HOWARD WELSH,

Defendant.

ORDER

In accordance with the Bail Reform Act, 18 U.S.C. § 3142(f), the Court held a hearing on July 20, 2006, on the United States Government's Motion for Detention and Argument.¹ The Court FINDS that the following facts mandate Defendant's detention pending his trial.

On August 10, 2004, a federal grand jury issued an indictment, charging Defendant with sixty-three (63) criminal counts,² including conspiracy to commit mail and wire fraud (Count 1), in violation of 18 U.S.C. § 371; eighteen (18) counts of wire fraud (Counts 2-19), in violation of 18 U.S.C. §§ 1343 and 2; seven (7) counts of use of fictitious name (Counts 20-26), in violation of 18 U.S.C. §§ 1342 and 2; and twenty-three (23) counts of mail fraud (Counts 27-49), in violation of 18 U.S.C. §§ 1341 and 2. The

¹The detention hearing for Defendant Welsh was held coincident with the hearing for his co-defendant, Lee Hope Thrasher, because the allegations and factual background regarding each defendant are inextricably intertwined.

²The Court notes that the Government represented that it was proceeding only on counts 1-49 in the present criminal proceeding.

Government moved for detention on the basis that Defendant posed a flight risk and a danger to the community, but the Court notes that the charges against Defendant do not give rise to a rebuttable presumption of detention. See 18 U.S.C. § 3142(e).

Both the Government and Defendant, by counsel, proceeded by proffer of evidence and each offered argument. To establish that detention is warranted, the Government offered the testimony of officer Paul Chandler, Metropolitan Police Department, London, England, and Special Agent Carol Willman, Internal Revenue Service, each of whom were cross-examined by defense counsel, and the Government introduced eight (8) exhibits. The Court, having taken into consideration the Government's written motion, the proffers of counsel, the testimony of witnesses, the Government's exhibits, the Pretrial Services Report, and the grand jury indictment of August 10, 2004, FINDS by clear and convincing evidence that Defendant is a danger to the community and FINDS by a preponderance of the evidence that he represents a risk of flight. The Court further FINDS that there is no condition or combination of conditions that will reasonably assure the safety of the community and Defendant's appearance for future proceedings.

The Court considered the nature and seriousness of the charges faced by Defendant. Defendant stands accused of a reasonably sophisticated "Ponzi scheme," which the Government has been actively investigating since on or about December 2001, and which has been ongoing since on or about January 1999. This alleged

scheme has resulted in over 900 victims having been defrauded of approximately thirty-one million (\$31,000,000) dollars. If convicted upon evidence beyond a reasonable doubt at trial, given the large number of criminal charges pending against Defendant, he faces hundreds of years in prison and millions of dollars in fines, which the Court deems serious.

The weight of the evidence against Defendant is strong. The Government's evidence indicates that Defendant, along with his co-conspirator, was a leader in an ongoing criminal enterprise that involved mail fraud and wire fraud as well as the international and domestic transfers of large sums of money that resulted from the fraudulent activities. Of the approximately thirty-one million (\$31,000,000) dollars that was allegedly fraudulently obtained, the Government has recovered through seizure only approximately two-and-a-half million (\$2,500,000) dollars, and those outstanding funds are believed to have been transferred to/within thirteen (13) international countries. Defendant was arrested in the United Kingdom on November 29, 2004 by British authorities acting on information obtained from the Government, which had sought Defendant following the issuance of a criminal complaint in September 2003 and following the grand jury indictment in August 2004. Following the arrest, British Authorities recovered a number of incriminating documents and other evidence, which was subsequently turned over to the Government and which suggest his active involvement in the criminal enterprise. That evidence also

reveals that Defendant was at least aware that he had been indicted in the United States and that he was sought by the Government.

The Court next considered Defendant's personal history and characteristics. Defendant is a British citizen with permanent residency status in the United States, but he has no ties to the local community. Defendant's criminal history is limited to a reckless driving conviction in April 2000. Apparently, Defendant's son, a resident of Washington state, was willing to serve as third-party custodian and would allow Defendant to reside with him subject to electronic monitoring. The Court does not view this as a tenable situation were Defendant to be released on terms and conditions. Defendant has no reported income, assets or liabilities, and there is nothing to indicate any prospects for legitimate employment. Moreover, the Court notes the nature of the criminal enterprise with which Defendant is charged, combined with the prospect that he has access to the rather large sums of money still unaccounted for, make it unlikely that any terms and conditions could be fashioned that would protect the public and ensure Defendant's appearance for future proceedings. The Government's evidence also suggested that Defendant was, while living abroad, attempting to initiate another fraudulent scheme, which indicates serial behavior that is not amendable to pretrial supervision.

The Court considers Defendant to pose a danger to the community due to his apparent involvement in schemes to defraud

members of the public through the aforementioned schemes. The Court notes that the cost of having to defend against the charges facing him provides Defendant with an incentive to continue the criminal activities. See, e.g., United States v. Williams, 753 F.2d 329, 335 (4th Cir. 1985) (noting that, due to the nature of the charges, the potential for pretrial recidivism exists in accused drug dealers). The nature of these activities poses a significant hazard to the community if Defendant were to be released.

The Court also considers Defendant to be a risk of flight. Without suggesting a finding as to guilt or innocence, the Court notes that the Government has proffered highly-detailed evidence of the crimes alleged based on the testimony of witnesses and documents. Defendant's potential access to substantial sums of money, his documented propensity for international travel, and the evidence suggesting attempts to elude Government officials and to hide his whereabouts, indicate an inability to comply with terms and conditions imposed by the courts. When combined with the weight of the evidence, the penalties faced by Defendant provide him with an incentive to flee if released. Accordingly, the Court concludes that Defendant poses a risk of flight.

In view of the facts as set forth above, the Court FINDS by clear and convincing evidence that Defendant represents a danger to the community and FINDS by a preponderance of the evidence that he represents a risk of flight. The Court further FINDS that no

condition or combination of conditions will reasonably assure the safety of the community or the appearance of Defendant. The Court doubts that even the most severe terms and conditions could secure his future appearance. The Court also doubts that the community could be adequately protected given the nature of his alleged criminal activities.

The Court, therefore, ORDERS Defendant DETAINED pending his trial. See 18 U.S.C. § 3142(e) and (f); United States v. Gebro, 948 F.2d 1118, 1121 (9th Cir. 1991); United States v. Araneda, 899 F.2d 368, 370 (5th Cir. 1990); United States v. Jackson, 823 F.2d 4, 5 (2d Cir. 1987); United States v. Medina, 775 F.2d 1398, 1402 (11th Cir. 1985).

Consequently, the Court further ORDERS Defendant committed to the custody of the Attorney General or his designated representative for confinement in a corrections facility separate, to the extent practicable, from persons awaiting or serving sentences or being held in custody pending appeal. Defendant shall be afforded a reasonable opportunity for private consultation with defense counsel. On order of a court of the United States or on request of an attorney for the Government, the person in charge of the corrections facility shall deliver Defendant to the United States Marshal for an appearance in connection with a court proceeding.

The Clerk shall mail or deliver a copy of this order to (i)

the United States Attorney at Norfolk, (ii) the United States Marshal at Norfolk, (iii) the United States Pretrial Services Office at Norfolk, and (iv) counsel of record for Defendant.

/s/

F. Bradford Stillman
United States Magistrate Judge

Norfolk, Virginia

July 24, 2006